

VI. General Terms

1. Orgalime, Validity

Orgalime's General Conditions for the supply and installation of mechanical, electrical and electronic products, as of April 2024, hereinafter referred to as the **Orgalime Conditions**, including the Appendix, as of April 2024 (Orgalime SI24 regarding the application of German law), shall be applicable in addition (but subordinate) to the following terms and conditions.

The following provisions of the Orgalime Conditions shall not be applicable: Clause 22, para. 2, sentence 3, 42, 43, 81, 82.

The TERMS AND CONDITIONS of the quotation, including the Orgalime Conditions, shall apply exclusively. Any deviating, contradictory or supplementary terms and conditions of the Customer shall be inapplicable, even if KOHLER does not specifically object to the validity of such terms and conditions.

2. Prices / Terms of payment

In derogation from Clause 45 of the Orgalime Conditions, the terms of delivery and payment set forth in the order shall be solely applicable.

3. Acceptance tests on site, Acceptance

Acceptance tests on site:

Following the completion of the installation, and unless otherwise agreed, acceptance tests must be carried out in order to determine whether the machine/system complies with the provisions set forth in the Agreement.

KOHLER shall inform the Customer in writing when the machine/system is ready to undergo acceptance tests, specifying a date for the acceptance tests on site which gives the Customer sufficient time to prepare for the tests and to delegate its representatives for these tests.

The Customer shall bear all costs related to the acceptance tests on site. KOHLER shall bear all costs incurred by its personnel and other representatives.

The Customer shall provide for and bear the costs of energy supply, lubricants, water, fuels, raw materials and all other materials required for performing the acceptance tests on site and any final adaptations in the run-up to the tests. Additionally, the Customer shall set up, and bear the costs of, the equipment and provide the personnel or expedients required for the performance of the acceptance tests on site.

If the Customer has been notified that the machine/system is ready for the acceptance tests but fails to meet its obligations or prevents the acceptance tests from being performed on site in any other manner, the tests shall be deemed to have been successfully performed on the day specified by KOHLER in its notification.

The on-site acceptance tests will be carried out during standard working times. Should the Agreement be void of any provisions on technical requirements, the tests shall be carried out in compliance with standard industry practice in the Customer's country.

KOHLER shall draw up records of the on-site acceptance tests and transmit them to the Customer. If the Customer did not delegate a representative to take part in the on-site acceptance tests after receiving the respective notification, the Customer shall have no right to dispute the acceptance records.

If during the acceptance tests on site the machine/system proves to be not in line with the Agreement, KOHLER shall have to rectify any defect/deficiency immediately. Upon the Customer's immediate written request, the aforementioned tests shall be repeated. This shall not apply if the defect/deficiency does not have a negative effect on the performance of the system.

Acceptance

The system is deemed to have been accepted, if

- a) the acceptance tests on site have been performed successfully or are deemed to have been performed successfully;
- b) the Parties have agreed to not perform any acceptance tests on site after KOHLER informed the Customer that the machine/system had been completed, unless the Customer declares within seven days from such a notification that the machine/system is not in compliance with the requirements for acceptance set forth in the Agreement.

The Customer must not decline acceptance if there are only minor defects/deficiencies which do not have a negative effect on the performance of the machine/system.

Upon acceptance of the machine/system, KOHLER's obligation to install the machine/system at the installation site shall be considered fulfilled, but without prejudice to any obligations to rectify minor defects/deficiencies.

Before acceptance of the machine/system, the Customer shall have no right to use the machine/system or part of it. In case of a contravention, the machine/system shall be deemed to have been accepted (unless KOHLER had previously agreed in writing to the use of the machine/system). In such a case, KOHLER shall no longer be under an obligation to perform any on-site acceptance tests.

The deadline set forth in Item 6 shall begin to run after the machine/system has been accepted. Upon KOHLER's written request, the Customer shall issue a certificate confirming the date of the machine's/system's acceptance. Any failure by the Customer to issue such a certificate shall not have a negative effect on the machine's/system's acceptance.

4. Warranty

In derogation from Clause 23 sentence 1 of the Orgalime Conditions, KOHLER **warrants** that the system is supplied in compliance with all applicable laws and provisions and that it conforms to them in all regards. Clause 23 shall be excluded.

In derogation from Clause 60 of the Orgalime Conditions, the Customer's claims for defects shall be subject to the Customer having fulfilled its statutory duties of inspection and notification of defects (Articles 377 and 381 of the Commercial Code). If a defect is discovered during an inspection or later, KOHLER must be notified immediately in writing. The notification shall be deemed to have been made immediately if it is made within seven working days, with the timely dispatch of the notification being decisive for meeting this deadline. Irrespective of this obligation to inspect the goods and give notice of defects, the Customer shall have to report obvious defects in writing within seven days from the date of delivery; here, too, the timely dispatch of the notification will be deemed sufficient for meeting the deadline. If the Customer fails to carry out a proper inspection and/or to report any defects found, any liability for an unreported defect shall be excluded.

In addition to Clauses 54-69 of the Orgalime Conditions, KOHLER shall be obliged and entitled to remedy (repair) or replace the goods at its discretion, which is to be exercised within a reasonable period of time.

5. Liability

In derogation from the provisions on liability set forth in the Orgalime Conditions, KOHLER's liability shall be as follows:

KOHLER shall be liable without limitation under the Product Liability Act as well as in cases of the express assumption of a guarantee or a procurement risk, in cases of KOHLER having fraudulently concealed a defect and in cases of a wilful or grossly negligent breach of obligations. KOHLER shall also be liable without limitation in the event of a wilful or negligent injury to life, limb or health. With regard to property damage and financial losses caused by slight negligence, KOHLER shall only be liable in the event of a breach of those obligations whose fulfilment enables the proper execution of the Agreement in the first place and on whose fulfilment the Customer is entitled to rely in a particular manner ("essential contractual obligations"), but limited to the damage foreseeable at the time of conclusion of the Agreement and typical of such a contract. Claims for damages by the Customer which are based on liquidated damages claims asserted by contractual partners of the Customer can in no way be foreseen by KOHLER nor are they typical of such contracts. The aforesaid shall also apply with regard to any liability for KOHLER's employees and agents.

6. Statute of limitation

In derogation from the provisions on the statute of limitation set forth in Clauses 58 and 59 of the Orgalime Conditions, the following shall apply to the statute of limitation:

Notwithstanding Article 438, para. 1, sub-para. 3 and Art. 634a para. 1 sub-para. 1 of the General Civil Code, the general limitation period for claims of the Customer arising from material defects and defects of title shall be one year from delivery. If acceptance tests have been agreed, the limitation period shall commence upon acceptance of the machine/system.

The above limitation periods shall not apply to limitation periods under the Product Liability Act. Article 438, para. 1, sub-para. 1, and sub-para. 2, and para. 3 as well as Art. 634a para. 3 of the General Civil Code shall also remain applicable. The statutory limitation periods shall apply exclusively to claims for damages asserted by the Customer in accordance with Clause 4.

7. Software licences

In derogation from the provisions set forth in Clause 5 of the Orgalime Conditions, the following shall apply:

KOHLER grants the Customer a non-exclusive, non-transferable, worldwide right to use the software component included in the machine/system as well as the associated documentation (the "**Software**") for an unlimited time in an unmodified form within the scope of the operation of the machine/system for which the Software is intended. KOHLER shall retain all other rights in the Software, including any copies.

The Customer must not use the Software beyond the intended scope of use.

In particular, the Customer must not

- sub-license the user right granted to it to any company other than its affiliated companies within the meaning of Article 15 of the Corporation Act

- grant user rights to final customers
- distribute, sell, rent, lease, or sub-license the Software, or make it available for download or publicly accessible
- surrender to third parties any copies of the Software handed over to the Customer.

The Customer may not obtain the Software and the associated program code, in particular by way of observing, examining, decompiling, disassembling or testing (so-called reverse engineering) the Software.

The Customer shall be obliged to provide appropriate protection for KOHLER's intellectual property, in particular copyright notices on the software, and to not remove them or change them without prior express consent.

The Customer acknowledges that the Software can be the target of virus attacks even if the greatest possible care is taken, or that its trouble-free functioning can be restricted without any action or fault on the part of KOHLER.

If, after the sale, KOHLER creates new versions or makes updates, upgrades or other resupplies exclusively referring to the Software, the above rights and obligations shall also apply to these new versions, etc.

8. Secrecy, confidentiality, data protection

In derogation from the provisions set forth in Clause 6 of the Orgalime Conditions, the following shall apply:

The CUSTOMER undertakes to keep KOHLER's confidential information secret vis-à-vis third parties, to not make such information accessible to third parties, to protect it against access by third parties and to not make it the subject of an application for protection of its own industrial property rights.

"Confidential information" shall include any information that KOHLER discloses to the Customer (whether in written, electronic, oral, digitalized or other form). "Confidential information" shall be deemed to include, in particular, business secrets within the meaning of Article 2, no. 1 of the Business Secrets Protection Act, as well as other confidential information. "Other confidential information" shall mean economically, legally, fiscally and technically sensitive or advantageous information which is disclosed to the Customer by KOHLER or to which the Customer obtains access. Such information may be confidential information if it is designated or marked as secret and/or confidential in any way or if its confidential nature is obvious.

The above obligations shall not apply to any confidential information which was already known to the Customer prior to disclosure, was independently developed or otherwise lawfully obtained by the Customer, or is generally known or becomes generally known without a breach of this confidentiality obligation.

The Customer shall disclose confidential information within the company only to the extent necessary and to the required group of persons (on a "need-to-know" basis). In particular, confidential information may only be made accessible by the recipient to staff members who are bound to secrecy or to consultants who are subject to professional secrecy, and only to the extent that these persons are involved in the contractual relationship with KOHLER and reasonably require the confidential information. The Customer shall take all necessary measures to ensure that all persons to whom confidential information is disclosed or made accessible treat it in the same way as the Customer is obliged to do pursuant to this Agreement.

The Customer shall be barred from economically exploiting or emulating confidential information in any way whatsoever or from allowing such information to be economically exploited or emulated by third parties, especially by way of so-called reverse engineering, and from applying for protection of industrial property rights concerning the confidential information (in particular trademarks, designs, patents or utility models).

When processing confidential information, the Customer must comply with the applicable statutory and contractual provisions regarding data protection. This shall include but not be limited to technical security measures, Article 32 of the General Data Protection Regulation, and the obligation, of staff members, to comply with confidentiality and data protection provisions (Article 28, para. 3, letter b, of the General Data Protection Regulation).

Should the Customer culpably violate the aforementioned confidentiality obligations either intentionally or negligently, the Customer shall pay liquidated damages in an appropriate amount to be determined by KOHLER at its reasonable discretion or, in the event of a dispute, to be set by the competent court. The amount of the liquidated damages to be paid in each case shall depend in particular on the degree of confidentiality of the business secret or other confidential information concerned, the degree of culpability, the scope of information disclosed and the number of unauthorized persons to whom the information was disclosed in breach of duty. This shall be without prejudice to any additional claims for damages. Any liquidated damages paid shall be offset against any other claims for damages. The liquidated damages shall constitute the minimum damage.

The Customer's obligation to keep KOHLER's confidential information secret vis-à-vis third parties, to not make it accessible to third parties, to protect it from access by third parties and to not make it the subject of an application for protection of its own industrial property rights shall survive this Agreement for a period of five (5) years.

Any Non-Disclosure Agreement concluded between KOHLER and the Customer shall take precedence over the foregoing provision.

Upon KOHLER's request (or, without such a request, after reaching the agreed project goal, at the latest), the Customer shall have to return to KOHLER without delay all confidential information provided to it as well as any copies and transcripts made thereof, or annihilate them after consultation with KOHLER without delay. The Customer may not claim a right of retention.

The following shall be excluded from the obligations set forth above: (i) routinely made backup copies of the electronic data traffic which cannot be deleted (e.g. copies which were stored in a backup file by means of an automated electronic backup system for securing electronic data) and/or whose deletion is only possible with unreasonable effort and (ii) confidential information that must be kept by the recipient due to mandatory legal regulations or due to binding orders issued by an authority or a court. The Customer shall have to inform KOHLER of such a fact in text form, citing the grounds.

9. Applicable law, Legal venue, Miscellaneous

The contractual relationship between the Customer and KOHLER shall be exclusively subject to the laws of the Federal Republic of Germany, excluding the conflict-of-law rules of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

In derogation of Clause 81 of the Orgalime Conditions, the place of KOHLER's registered office shall constitute the sole legal venue for any present or future claims resulting from relationships with businessmen.